

# INSIDER TRADING & UPSI

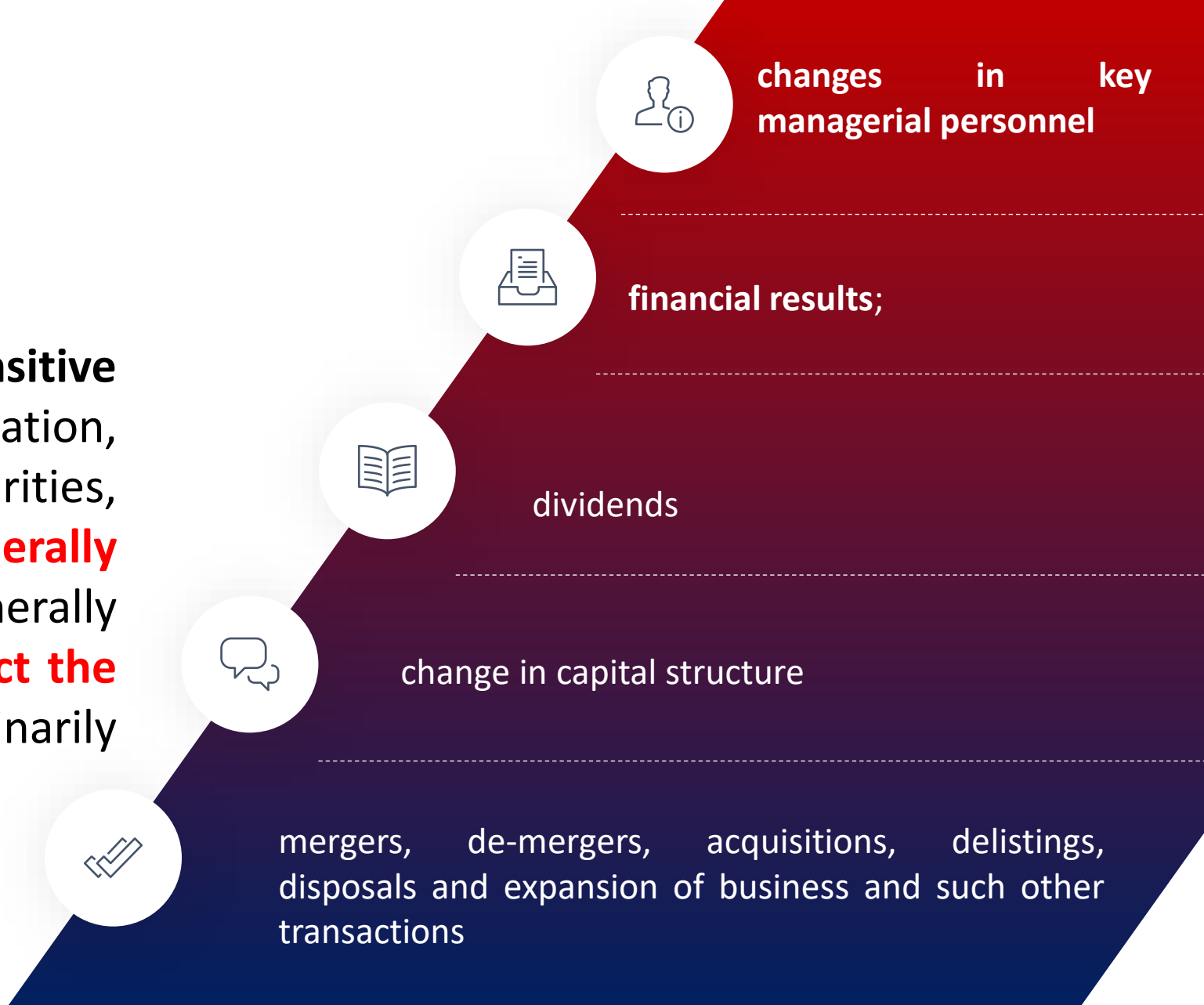


# What is UPSI?

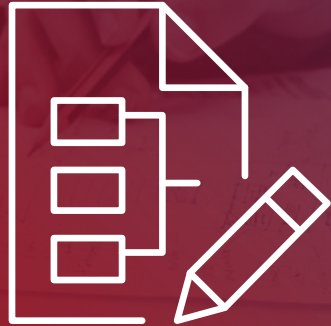


## SEBI (PIT) REGULATIONS, 2015

"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is **not generally available** which upon becoming generally available, is likely to **materially affect the price of the securities** and shall, ordinarily including.



# FEW OTHER EXAMPLES OF UPSI



**Buybacks or Rights Issue**



**Withdrawal of announced Corporate Action**



**Financial information of subsidiary**



**Litigation, disputes/Regulatory Actions**



**A big Contract or loss of Contract**



# Indicative list of departments may be privy to UPSI



Board of Directors & Committees (Audit)



MD/CEO/CFO Office



Financial Planning and Analysis



Corporate Finance and Accounts



Corporate Secretarial/Legal Team



Third Party : Statutory Auditors/Consultants/Professional Firms

# Deciding factors in case of UPSI



Whether the Information is Price Sensitive Information (PSI) ?



Whether PSI is “unpublished” or “Not Generally Available”?



Whether Trades executed by an Insider or Connected Person?



Whether trades executed based upon UPSI?



What defenses can be available ?

# DECIDED CASE LAWS W.R.T. UPSI





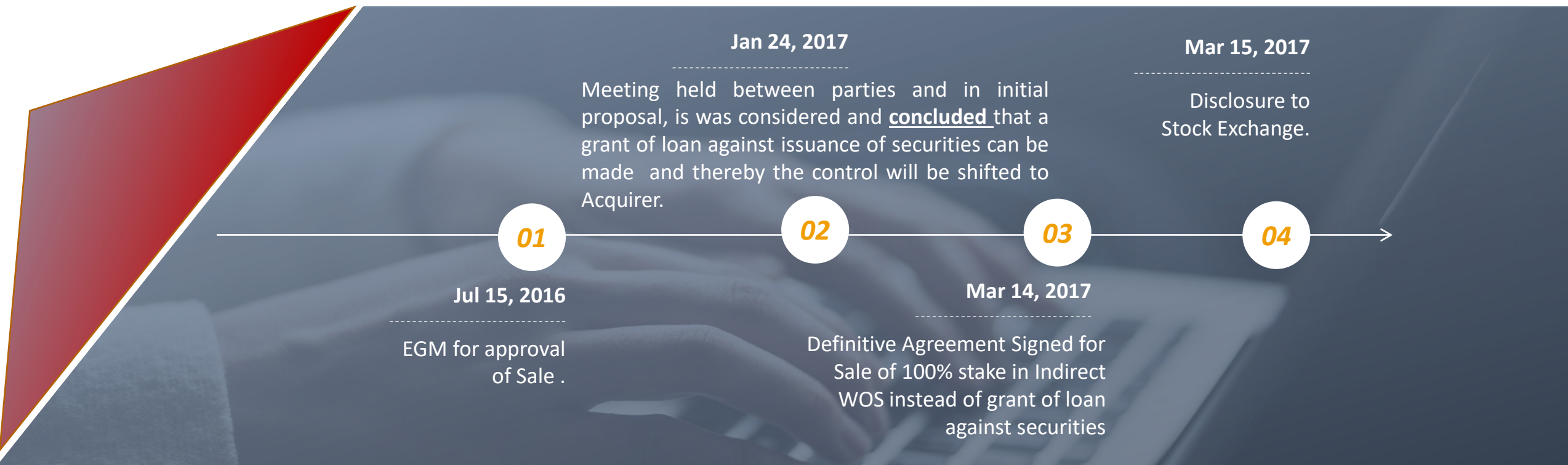
## CASE STUDY 1

# INFORMATION: “Sale of Part Business”

- The Company proposed to sell business of WOS of a WOS. That is indirect Subsidiary.
- The “disposal of business” is UPSI as per Regulations.
- Further in the present transaction, the investment value of Listed Company was of a significant amount (although an indirect WOS)
- Hence the transaction was PSI



# TIMELINE





# WHEN DID THE PSI ORIGINATE & WHEN IT CEASED?

01

It is concluded by SEBI that the date of origination of UPSI is the date when the original proposal for the investment in form a loan in exchange of securities of the WOS was made i.e. on Jan 21, 2017.

02

The transaction was concluded by way of sale of 100% shareholding of the indirect WOS and definitive agreement was signed between the Parties on Mar 14, 2017 and announced on Mar 15, 2017.

03

Hence from Jan 24, 2017 to Mar 14, 2017 is the period of UPSI.

04

**Irrespective of the change in the nature of the transaction from subscription to securities by way of loan to 100 % stake sale**



## WHO WAS IN POSSESSION OF THE INFORMATION?

*Director of the Company, who was also part of the Management Committee of the Co.*



## WHETHER TRADES WERE EXECUTED OR UPSI COMMUNICATED/PASSED ON?

*The director communicated the information to her husband, who was also a director in group entities*



## WHETHER THE TRADES WERE EXECUTED BASED ON THE UPSI?

*The trading pattern was analysed by SEBI and it was found that trade concentration in the scrip of Co. was 93.93% during UPSI period which was only 11.19% and 0% during pre-UPSI and post-UPSI periods.*

## CASE STUDY 2

### INFORMATION:

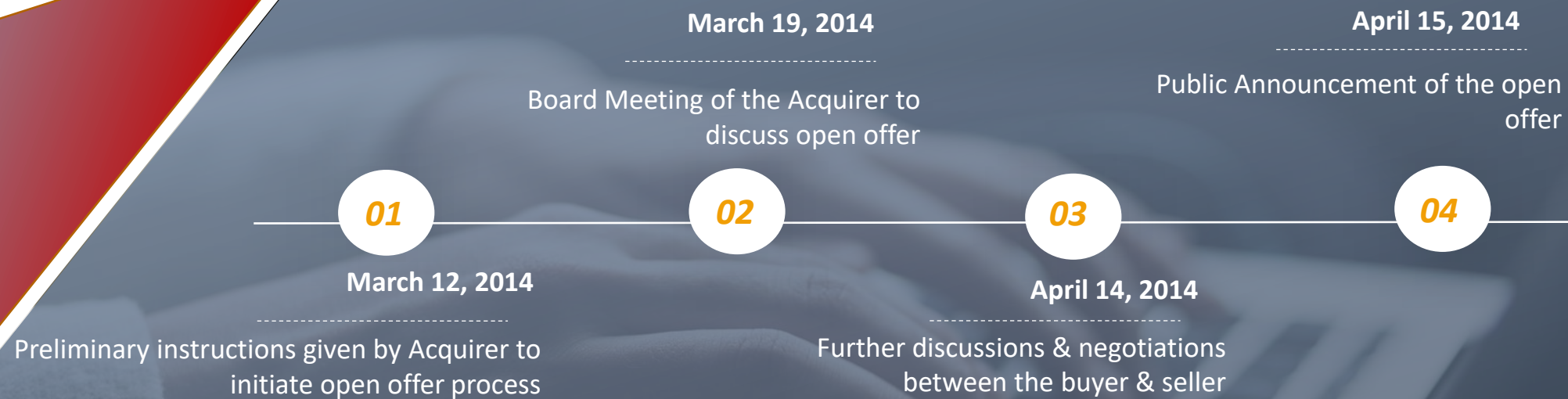
## “Sale of Business through Open Offer”

- Yes, acquiring a majority stake in the Target Company is a material information which will qualify as UPSI.
- Further, the announcement of the acquisition had also materially affected the price of the securities of the Target Company & is specifically listed as UPSI under the PIT Regulations.





# TIMELINE



# WHEN DID THE PSI ORIGINATE & WHEN IT CEASED?

01

The Noticee contented that the origination of the UPSI would be when the open offer attained finality, i.e. when Transaction Committee of the Acquirer in discussions with the PACs approved the open offer transaction i.e. April 14, 2014.

02

It was also contented that Acquirer was speculating acquisition of majority stakes since September, 2013 which was already in news.

03

SEBI observed that the origination of the PSI was when the preliminary instructions for making the Public Announcement of the Open Offer were given by email on March 12, 2014 ruling out other option being evaluated .

04

Therefore, the period of UPSI was from **March 12, 2014 to April 14, 2014.**

## WHO WAS IN POSSESSION OF THE INFORMATION?

*Global Business Manager (GBM) of the Acquirer*

## WHETHER TRADES WERE EXECUTED OR UPSI COMMUNICATED/PASSED ON?

- *GBM did not trade, however, he passed on the information to connected entities.*
- *GBM was held liable for communication of the UPSI*

## WHETHER THE TRADES WERE EXECUTED BASED ON THE UPSI?

- *SEBI relied on the fact that the Noticees preferred to buy 'out of the money options' which acted as a strong circumstantial evidence to indicate that these Noticees had confidence and belief that there was a high probability that the price of the underlying asset will be near about the strike price.*
- *The trading history of the Noticees also showed that they mostly conducted intra-day trades but the volume of trade was high in the scrip where they had a relative as an insider.*



## CASE STUDY 3

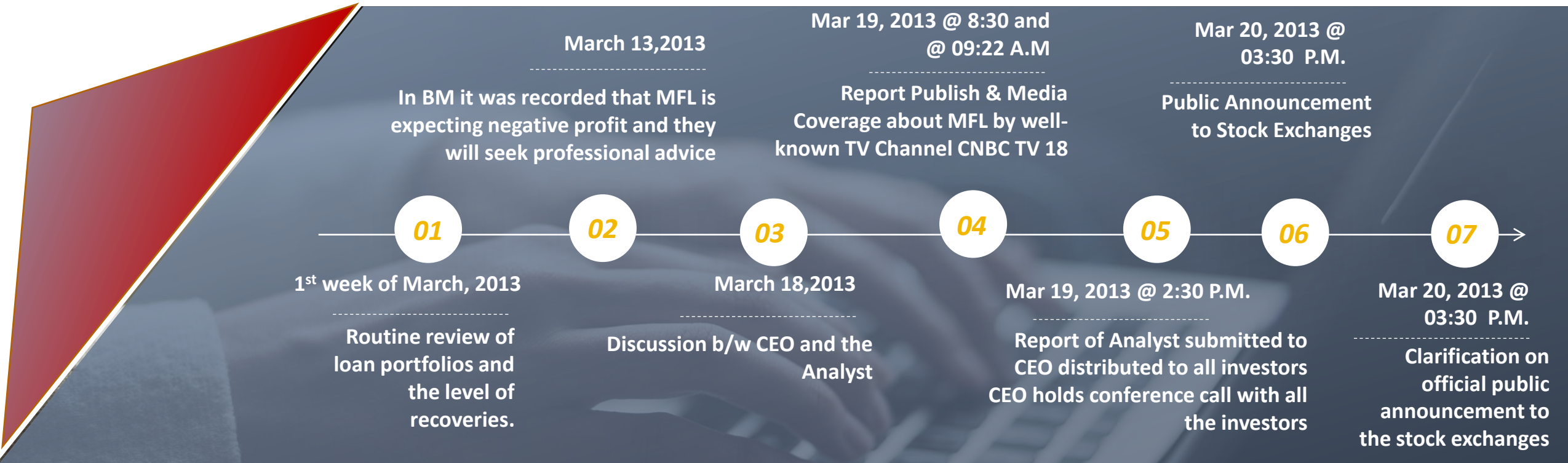
### INFORMATION:

**“Prospective Loss” & “Analyst report which was based upon data available in public domain”**

- Management Reviewed loan portfolio & level of recoveries and observed that company may have to report negative profits.
- This information of financial review is PSI.
- The Report of analyst which was based upon the prices of gold, rate cut and other publically available data was not found to be PSI.



# TIMELINE



# WHEN DID THE PSI ORIGINATE & WHEN IT CEASED?

01

That the date of origination of UPSI is the date when the management Reviewed its loan portfolios and level of recoveries i.e. on 1<sup>st</sup> March 13,

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02

It was observed that although Company gave disclosure to Stock Exchange after closing hours on March 19, the information was already there in public domain and ceased to be “Unpublished” when CNBC TV 18 was covering the news of MFL since morning 9: 22 a.m. on Mar 19, 2013.

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03

Hence from Mar 13, 2013 to Mar 19, 2013 @ 09:22 A.M. is the period of UPSI.

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04

That the trades were executed after the coverage of News by CNBC TV 18





## WHO WAS IN POSSESSION OF THE INFORMATION?

*Management*

## WHETHER TRADES WERE EXECUTED OR UPSI COMMUNICATED/PASSED ON?

*The trades were executed by 6 Mutual Funds who traded on behalf of their Unitholders.*

## WHETHER THE TRADES WERE EXECUTED BASED ON THE UPSI?

*No, as the information ceased to be “unpublished” on the day of the trades executed*

## INFORMATION:

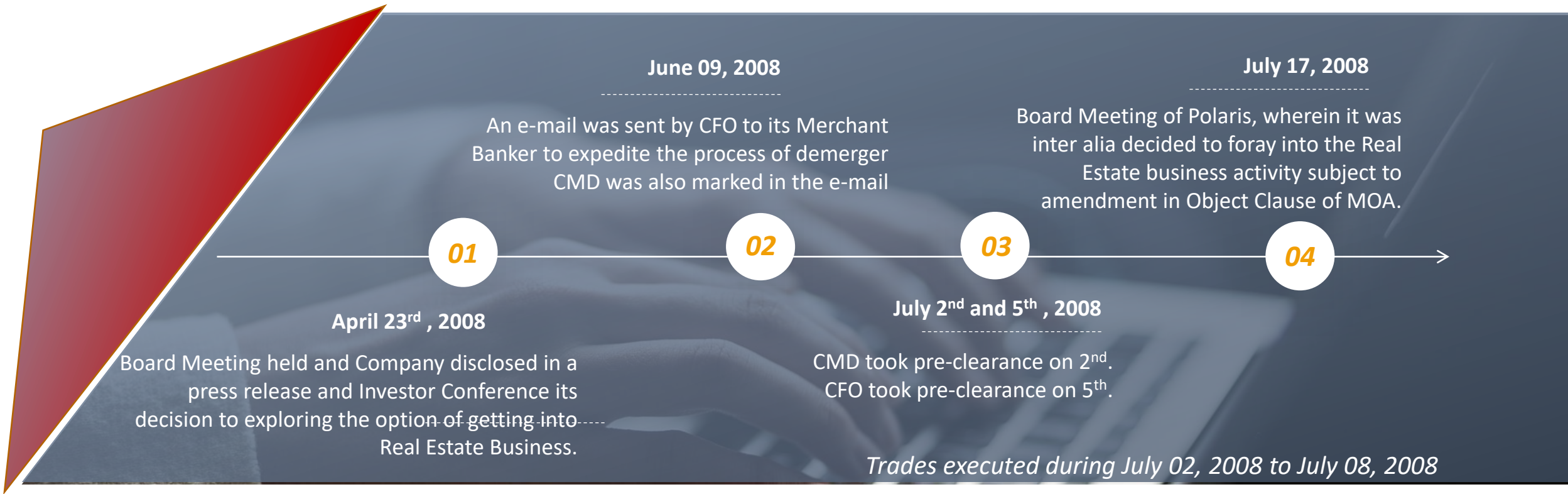
# “Commencement of Real Estate Business”

## CASE STUDY 4

- the “**Expansion of Business**” is UPSI as per Regulations.
- But Company’s intentions about foraying into real estate business had already come into public domain through Press Release and Investor Conference.



# TIMELINE





# WHEN DID THE PSI ORIGINATE & WHEN IT CEASED?

01

The UPSI was in fact the decision of the Board in its meeting on April 23, 2008 to utilize the real estate investments of the company for maximizing the shareholder value and the same was in public domain.

02

In between April to July, the Company considered various options with respect to venture into real and mode of expansion. Demerger was just one such option.

03

The email of management for expediting the Demerger was w.r.t. evaluating demerger and the board meeting of July did not consider demerger and merely approved change in MOA.

Hence no PSI



### **WHO WAS IN POSSESSION OF THE INFORMATION?**

*It was alleged that the Promoter cum CMD and the CFO was in possession of the information as they were marked in the E-Mail to Merchant Bank mentioning specifically about the demerger process on the 'real estate business' activity and the need to expedite the decision on the demerger*

### **WHETHER TRADES WERE EXECUTED OR UPSI COMMUNICATED/PASSED ON?**

*Trades were executed but before sending of the e-mail*

### **WHETHER THE TRADES WERE EXECUTED BASED ON THE UPSI?**

- *No, as there was no concrete decision which had been arrived at, as on the date of the email; thus there was no UPSI in existence.*
- *The Content of the e-mail itself refers to the need to expedite the decision on the demerger.*
- *The E-Mail was sent after the execution of trades by entities.*

## INFORMATION:

**“Financial Information of the Co.  
which is circulated through  
unidentified source”**

### CASE STUDY 5

- The information which leaked was the financial data of the Co.
- Due to the accuracy of the data with the actual financial results, it is treated as a UPSI.
- The financials of a listed Co. are listed as UPSI under the PIT Regulations





# TIMELINE



# SIMILARITY OF THE LEAKED DATA WITH THE ACTUAL RESULTS

## WhatsApp Message on 09.05.2017

*“Bajaj auto q4:- total income 5,212cr, ebitda 1199cr, pat 802cr. Results on 18th may (12-2pm)”*

## Comparison with Actual Results

<i>Particulars</i>	<i>As per WhatsApp</i>	<i>As announced by Co.</i>	<i>As per SCN</i>
<i>Total Income</i>	<i>5212 cr.</i>	<i>5506 cr.</i>	<i>5212.83 cr.</i>
<i>EBIDTA</i>	<i>1199 cr.</i>	<i>1056 cr.</i>	<i>1198 cr.</i>
<i>PAT</i>	<i>802 cr.</i>	<i>802 cr.</i>	<i>801.82 cr.</i>



## WHO WAS IN POSSESSION OF THE INFORMATION?

- *Here, the source of the information was not found, but the data which was circulated through WhatsApp was exactly or very close to the actual figures released by the Co.*
- *However, as per PIT Regulations, 2015, the source of the information is not needed if it is proved that the Noticee was in possession of UPSI*

## WHETHER TRADES WERE EXECUTED OR UPSI COMMUNICATED/PASSED ON?

*The Noticees were held liable and charged for private circulation of the UPSI on WhatsApp groups and also for trading in such similar cases.*





### **WHETHER THE TRADES WERE EXECUTED BASED ON THE UPSI?**

- The Noticees had contended that the information was in the nature of “HOS” or “Heard on Street” which was similar to reports being published by trade analysts etc.
- The Noticees also contended that there was no Connection among the Noticees or with the Company and disputed the existence of UPSI without establishing leak.
- However, SEBI observed that the Noticees were not able to substantiate the exact nature of the figures with research documents/ substantial backing.
- Research Analyst reports are circulated to multiple people & only a few people do not have access to the same.
- SEBI held that there was no need to prove the source once it was established that the information was UPSI.

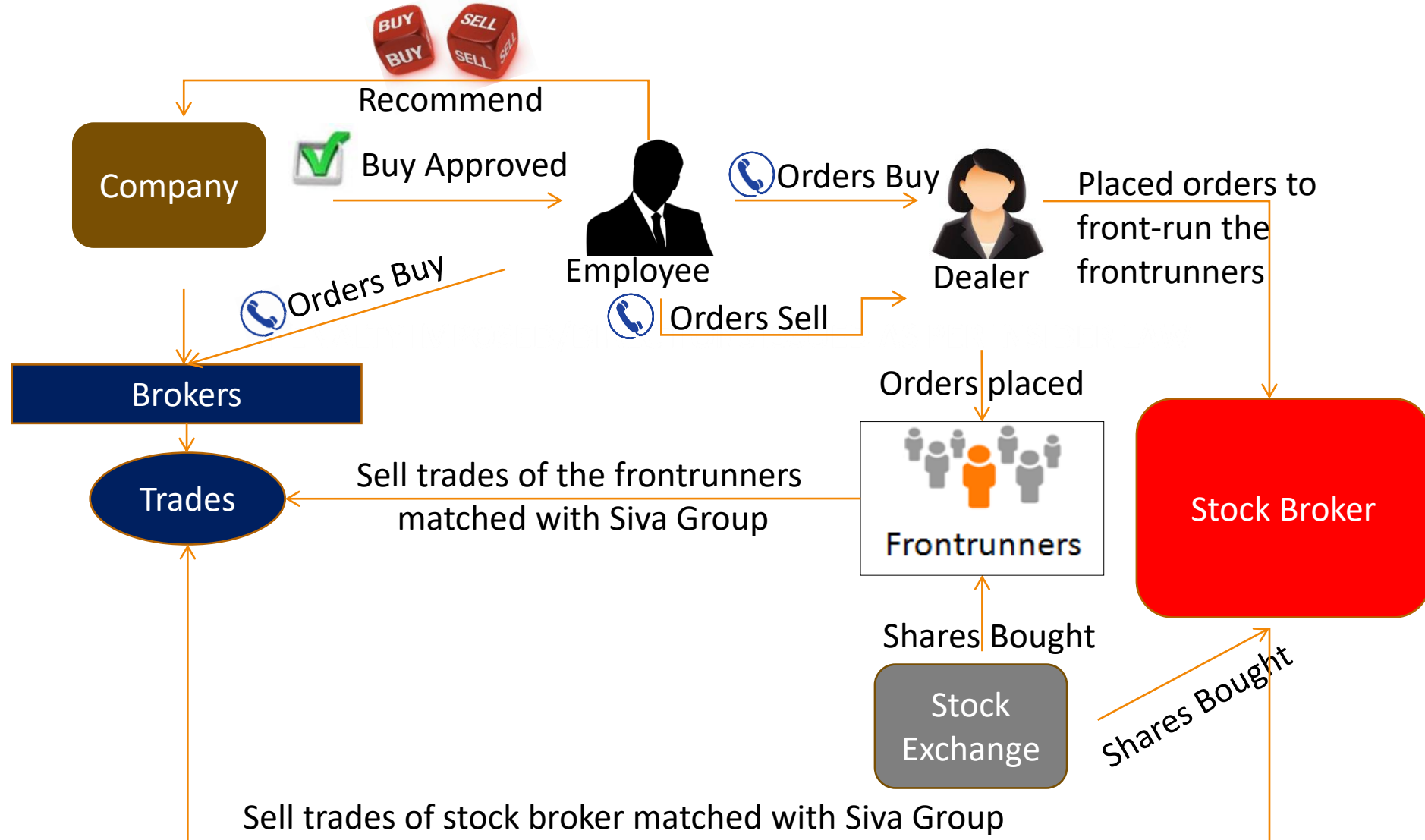


## CASE STUDY 6

### INFORMATION:

**“Prospective Trades proposed to be executed”**

## Explanation of Front-running of trades







# Front-running by Employee

01

Employee of a Company placing order for Company, front-run trades of the Company in different accounts (of Employee and its relatives)

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02

Dealers of Broker front-run trades of the aforesaid Employee through client account and also proprietary account.

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03

SEBI has passed instructions of Impounding to the tune of approx. ₹ 15 Crores (ill-gotten gains including interest) against the Broker as well as Employee and other entities who traded.

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## PENALTY IMPOSED/DIRECTIONS ISSUED AS PER INSIDER LAW

Violation type	Consequence	Penalty Range
Disclosure defaults	Monetary Penalty	Individual – Rs. 1 to Rs. 5 lakhs Co. – Rs. 3 lakhs to 8 lakhs (depending upon the delay period & nature of UPSI)
Code of Conduct violations	Monetary Penalty	Rs. 1 to Rs. 10 lakh
Trading during the window closure	<ul style="list-style-type: none"> <li>• Monetary Penalty</li> <li>• May give direction under Section - 11B (including disgorgement)</li> </ul>	Rs. 8 lakh to Rs. 1 Cr.
Trading while in Possession of UPSI	<ul style="list-style-type: none"> <li>• Monetary Penalty</li> <li>• Direction(s) under Section- 11B including ban from securities market/trading in the scrip of the Co.</li> <li>• Impounding of illegal gains/loss avoided plus disgorgement</li> </ul>	Disgorgement Rs. 10 lakhs to Rs. 15 Cr. Ban of 1 to 5 years

# **“Some important points to consider”**

- There is difference in violation of trading with UPSI and trading during window closure.
- Trading Window cannot be closed for all the transactions, specially when transactions are being evaluated and nothing is conclusive.
- Parties should be cautious that people privy to information does not trade
- Also a proper record of communication is to be maintained w.r.t. movement of information



# “Possible Defenses”

- Trades were executed when trading window was open;
- Pre-clearance obtained;
- No access to PSI (to be substantiated by documents);
- Trades in accordance to regular trading pattern;
- Specific reason for trade (like family event, health emergency etc.);
- Inter-se transfer;
- Trading Plan;

# Thank You

**Deepika Vijay Sawhney**

Partner & Head – Securities Law &  
Transaction Advisory

[deepika@indiacp.com](mailto:deepika@indiacp.com)

+91 11 40622229

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